

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 7, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

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|------------------------|--|
| Hearing & Date Posted: | SB 20, 2/28/2003; SB 35, 2/28/2003; SB 32, 2/28/2003; SB 49, 2/28/2003; SB 56, 2/28/2003 |
| Executive Action: | SB 49; SB 20; SB 32 |

HEARING ON SB 20

Sponsor: SENATOR DWAYNE GRIMES, SD 20, Clancy

Opening Statement by Sponsor:

SENATOR GRIMES opened on SB 20. He stated that this is a clean up bill from the state assumption legislation. It would exempt court reporters, appointed as independent contractors, from the Montana Procurement Act. This bill would allow judges to contract with court reporters for services outside the bidding process thereby allowing judges to go around the \$5,000 cap. He emphasized that there are not enough court reporters to go around.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 30}

Proponents' Testimony:

Beth McGlockin, Montana Supreme Court, supported SB 20 stating it is a clean up bill from the state assumption of district courts. The state assumption bill directed the State to either continue contracting with court reporters or allow them to become employees. She stated this bill would eliminate the current conflict with the State Procurement Act. She stated there is not reason to disrupt the independent court reporters doing business in Montana.

{Tape: 1; Side: A; Approx. Time Counter: 31 - 48}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR GRIMES closed on SB 20.

HEARING ON SB 35

Sponsor: SENATOR DWAYNE GRIMES, SD 20, Clancy

Opening Statement by Sponsor:

SENATOR GRIMES opened on SB 35. He stated that this bill was requested by the Health and Human Services Interim Committee. It

would ensure that a person is truly developmentally disabled (DD) when they are found guilty of a crime. He stated that the problem is the Code has a hole in it when dealing with a person who is developmentally disabled. This bill defines developmental disability and would force the State to prove they are truly DD if they are placed at Boulder.

{Tape: 1; Side: A; Approx. Time Counter: 49 - 117}

Proponents' Testimony:

Jeff Sturm, Superintendent, Montana Developmental Center (MDC), supported SB 35. He stated this is a clean-up bill. In the last year, they had two commitments to MDC, one criminal and one civil. He felt this bill would clarify the definition of a developmentally disabled person.

{Tape: 1; Side: A; Approx. Time Counter: 118 - 142}

Opponents' Testimony: None

Informational Testimony:

Jim Smith, Montana County Attorney's Association, spoke as an informative witness. He felt the Committee should take a close look at this bill. He is concerned about the law as proposed would give the placement discretion to the Department of Public Health and Human Services (DPHHS) instead of the courts. He is concerned whether, if this bill passed, anyone would ever end up at a correctional facility.

{Tape: 1; Side: A; Approx. Time Counter: 143 - 165}

Questions from Committee Members and Responses:

REP. NEWMAN asked how this procedure, in the Criminal Code, would run with the procedure in the Civil Code, for committing someone who is DD. He explained that to presently commit someone civilly, the prosecution first applies to the court. Then a special DPHHS team evaluates the person and reports back to the prosecution and the court. **Mr. Sturm** stated it would be under a criminal statute. The person who is criminally committed would never see the screening team. It would be up to the court and the sentence review team to determine what the sentence should be. **REP. NEWMAN** stated the screening team has a wealth of information and expertise in this area and asked whether DPHHS would use them. **Mr. Sturm** stated he did not know. He stressed that the screening team looks at different criteria than would the criminal commitment law.

{Tape: 1; Side: A; Approx. Time Counter: 166 - 202}

REP. NEWMAN asked what facilities exist at the Montana Developmental Center for the person who is found to be mentally fit to proceed, who is criminally competent, yet developmentally disabled. **Mr. Sturm** stated that such a person is now placed in with the civilly committed. There is a secure care unit which is locked and a violent person could be separated out.

{Tape: 1; Side: A; Approx. Time Counter: 203 - 221}

REP. NOENNIG asked about the effect this bill would have by giving discretion of placement to DPHHS as opposed to the courts. **Mr. Sturm** responded that the original bill did not give discretion to DPHHS. The controversy amongst DPHHS counsel was whether they could have a criminal commitment in the Developmental Disability facility. The amendments put forth in the Senate clarify what is already happening.

{Tape: 1; Side: A; Approx. Time Counter: 222 - 273}

Closing by Sponsor:

SENATOR GRIMES closed on SB 35. He stated that this bill would secure the environment for receiving medicaid funding and allow the developmental center to deal with the criminally committed. He explained that violent offenders should be screened out because in some cases, the populations cannot be mixed. He stressed there could be constitutional ramifications if violent offenders are placed in with persons who are nonviolent, yet developmentally disabled, at Deer Lodge.

{Tape: 1; Side: A; Approx. Time Counter: 274 - 338}

HEARING ON SB 32

Sponsor: **SENATOR DALE MAHLUM, SD 35, Missoula**

Opening Statement by Sponsor:

SENATOR MAHLUM opened on SB 32. He stated that this bill would revise the lottery fingerprint check requirements as set forth by the U.S. Department of Justice (DOJ). It would require people associated with the lottery to be free of criminal convictions.

{Tape: 1; Side: A; Approx. Time Counter: 339 - 378}

Proponents' Testimony:

John Onstead, Security Director of the Montana Lottery, Helena, supported SB 32. He explained this bill would keep the Montana Lottery in line with DOJ requirements as mandated by the FBI. It came about from a lawsuit against the federal government in which the FBI was ordered to produce certain criteria. He stated the criteria is very straightforward, mandating the FBI to examine the prints on the federal level.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR MAHLUM closed on SB 32 stating this is a simple but necessary bill for Montana. It clarifies what the federal government wants. The bill would protect Montana from financial harm if a contracting supplier did not fulfill their statutory obligations. He urged a do pass.

{Tape: 1; Side: A; Approx. Time Counter: 379 - 456}

HEARING ON SB 49

Sponsor: **SENATOR DEBBIE SHEA, SD 18, Butte**

Opening Statement by Sponsor:

SENATOR SHEA opened on SB 49. She stated that this bill would prohibit disclosure of military discharge certificates to unauthorized people. She explained the form is called a DD214 which proves whether someone has served in the military. She stated there are three critical pieces of information on the form: veteran's identification, veteran's military information, and veteran's character of service. Veterans were encouraged to register this form with the Clerk and Recorder for safekeeping. She emphasized that some people would be able to access this information but it would not be public information.

{Tape: 1; Side: A; Approx. Time Counter: 457 - 512}

Proponents' Testimony:

Roger Hagen, Association of Officers of the National Guard, supported SB 49. He stated he represents more than 5,000 members of the Guard. He stated the privacy concerns regarding the DD214 is a nationwide problem. He submitted an article for the Committee on identity theft. He stated many vets choose not to record their DD214 with the Clerk's office out of fear of identity theft. He stated it is important for people to file their DD214 forms and passing this bill would encourage them to do so.

EXHIBIT(juh48a01)

{Tape: 1; Side: B; Approx. Time Counter: 1 - 43}

Robert Throessel, Montana Association of Clerks and Recorders, Helena, supported SB 49. He stated the DD214 is currently public information. This bill would take the forms out of the public arena and put them in a separate, nonpublic, filing system.

{Tape: 1; Side: B; Approx. Time Counter: 44 - 77}

Bonnie Ramie, Jefferson County Clerk and Recorder, supported SB 49. She stated that this bill would help prevent identity theft and that the DD214 should be confidential.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

The Committee discussed the scope of the bill and problems involving identity theft. It questioned why military documents are the target of the bill and not other documents like birth and marriage certificates, divorce decrees et cetera. **Mr. Throessel** responded that birth and death certificates are handled through the DPHHS and they have their own rules yet it is filed at the Clerk's office and is technically public information.

Closing by Sponsor:

SENATOR SHEA closed on SB 49.

{Tape: 1; Side: B; Approx. Time Counter: 78 - 196}

HEARING ON SB 56

Sponsor: SENATOR BOB KEENAN, SD 38, Flathead and Lake Counties

Opening Statement by Sponsor:

SENATOR KEENAN opened on SB 56. He stated that the Legislative Finance Committee requested this bill and came about by an interim study of mental health services. The subcommittee monitored the progress of the DPHHS in developing mental health services. He stated that this bill would limit the period of confinement for a person found not guilty by reason of mental disease or defect. He stated this bill is not a "get out of jail free" pass. The people who get off by reason of mental disease or defect serve an average of 20 years. When their commitment expires, if the person is still a danger to themselves or others, an involuntary civil commitment would occur. This bill would give the victim and the public a determinative sentence.

{Tape: 1; Side: B; Approx. Time Counter: 197 - 269}

Proponents' Testimony:

Ed Amber, Director of Warm Springs, supported SB 56. He stated that this bill would affect 10 out of 185 patients at Warm Springs as well as future cases. The 10 people were committed for violent offenses such as homicide, assault, and stalking. He stated these folks are typically hospitalized for a long time and that the court controls their discharge. If Warm Springs believed that someone is ready to return to the community, they craft together a carefully thought out discharge plan. He stated this bill will not save money or put dangerous people out on the street. He stressed it would bring Montana into line with other jurisdictions which hold that you cannot commit a person forever or for a longer time than they would have served if convicted criminally. The bill would give the patient and staff a target date to work towards.

{Tape: 1; Side: B; Approx. Time Counter: 270 - 370}

Donald Haar, Montana Psychiatric and Medical Association, Billings, supported SB 56. He stated that he is a practicing Physician/Psychiatrist. He felt this is a fair bill to the patients in that it sets a goal within a period of time for the patient to work towards.

Al Davis, Montana Mental Health Association, supported SB 56. He stated that the bill has built in safeguards. He stated the bill has sufficient safeguards for public safety and protection of

victims. He stated that mental illness is a disease and length of incarceration judgments need to be addressed differently.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked about rules for notification other than what is in the bill. **Mr. Amber** stated that Warm Springs is statutorily required to notify victims if a person leaves the premises without permission or is discharged. **REP. NOENNIG** asked why the provision is necessary in the bill if they are already required by law to notify victims. **Mr. Amber** responded that he was not sure but thought it was helpful to have it in this section of the forensic law.

{Tape: 1; Side: B; Approx. Time Counter: 371 - 489}

REP. GALLUS asked how long Mr. Rooster has been committed in Warm Springs. **Mr. Amber** responded, "25 years."

REP. CLARK asked about the recidivism rate of discharged people and the process. **Mr. Amber** stated that the 10 committed persons at Warm Springs did the following crimes: homicides, rape, robbery, stalking, felony and aggravated assaults. He explained that they are first evaluated, given a treatment plan, and medication. Then they work on their social skills and their ability to follow rules and to get along with others. They receive psychiatric treatment and move along a 10-step system. Each step moves them closer to freedom. They assess each person on an annual basis looking at whether they have a mental illness and, as a result, whether they are dangerous. If they do not have those two elements, they are obliged to notify the court that the person should be released and they prepare a discharge plan.

He stated the court looks at a lot of factors before discharging someone. They must refrain from drug and alcohol use, remain on their prescribed medication, live at a specific place and maintain other conditions. He was aware of only a couple of people who returned to Warm Springs but had not seen anyone commit a crime while in the community. He stressed that most people released from Warm Springs have done very well in the community.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 96}

Closing by Sponsor:

SENATOR KEENAN closed on SB 56. He stated that language in this bill was taken from Utah's statute. He explained that SB 55 and SB 57 will bookend this bill.

EXECUTIVE ACTION ON SB 49

Motion/Vote: REP. GALLUS moved that SB 49 BE CONCURRED IN.

Motion carried unanimously, by voice vote. On consent calendar. CHAIRMAN SHOCKLEY will carry.

EXECUTIVE ACTION ON SB 20

Motion/Vote: REP. LASZLOFFY moved that SB 20 BE CONCURRED IN.

Motion carried unanimously, by voice vote. On consent calendar, carried by CHAIRMAN SHOCKLEY.

EXECUTIVE ACTION ON SB 32

Motion/Vote: REP. GALLUS moved that SB 32 BE CONCURRED IN.

Motion carried unanimously, by voice vote. On consent calendar, carried by CHAIRMAN SHOCKLEY.

{Tape: 2; Side: A; Approx. Time Counter: 97 - 186}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh48aad)